

1 N. Patrick Flanagan Esquire
Nevada Bar No. 952
2 Hale, Lane, Peek, Dennison, Howard,
Anderson and Pearl
3 100 West Liberty Street, Tenth Floor
P.O. Box 3237
4 Reno, Nevada 89505
Telephone: (702) 327-3000

5 Samuel D. Rosen
6 Paul, Hastings, Janofsky & Walker, LLP
399 Park Avenue
7 New York, New York 10022
Telephone: (212) 318-6000

8 Attorneys for Defendant Religious
9 Technology Center

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 GERALD ARMSTRONG,
13 Plaintiff,

CASE NO. CV-N-97-00670 ECR (RAM)

14 vs.

15 MEMORANDUM OF POINTS AND
16 AUTHORITIES OF DEFENDANT
RELIGIOUS TECHNOLOGY CENTER
17 IN SUPPORT OF DEFENDANT'S
18 MOTION TO DISMISS COMPLAINT

19 DAVID MISCAVIGE and CATHY
20 NORMAN, individuals; CHURCH OF
SCIENTOLOGY INTERNATIONAL, a
21 California corporation; the RELIGIOUS
TECHNOLOGY CENTER, a California
22 corporation; the SEA ORGANIZATION,
a California based unincorporated entity;
23 and the CHURCH OF SCIENTOLOGY
OF TEXAS, a Texas corporation,

24 Defendants.

25 Defendant Religious Technology Center ("RTC"), by its undersigned counsel, submits this
26 Memorandum of Points and Authorities in support of its Motion to Dismiss for lack of subject matter
27 jurisdiction; lack of personal jurisdiction; improper venue; and because plaintiff is a fugitive from justice,
28 is in contempt of court, and has fled from a bench warrant issued by the Superior Court of California, Marin
County.

PRELIMINARY STATEMENT

So as not to burden this Court with unnecessary papers, RTC hereby adopts the Statement of Facts and points I, III and IV of the Memorandum of Points and Authorities of Defendant Church of Scientology International in Support of Defendants' Motion to Dismiss Complaint (hereinafter "CSI Memorandum") in support of RTC's motion to dismiss plaintiff's complaint for libel and intentional infliction of emotional distress pursuant to FRCP 12(b)(1) and (2). In addition to the grounds set forth in the CSI Memorandum, Armstrong's Complaint should be dismissed because this Court lacks personal jurisdiction over defendant RTC. Plaintiff's complaint is devoid of any allegations connecting RTC or any of the other defendants in any way whatsoever to Nevada, because neither defendants nor the alleged acts involve Nevada – either directly or indirectly. RTC – as plaintiff concedes – is a resident of California. (Compl. ¶ 1.) The act forming the basis of the complaint concerns the sending of an allegedly defamatory letter from Texas to Alabama; plaintiff alleges no publication or distribution to anyone in Nevada. As there are no contacts between defendants and Nevada, there is absolutely no basis for this Court to exercise personal jurisdiction over defendants. Indeed, plaintiff does not even allege personal jurisdiction.

STATEMENT OF JURISDICTIONAL FACTS

As set forth in the Declaration of Warren McShane, the President of RTC, RTC is a California corporation with its principal place of business in California. (McShane Decl. ¶ 2.) RTC has no offices or subsidiaries in Nevada. (*Id.* ¶ 3.) RTC is not qualified to conduct business in Nevada and it does not conduct business in Nevada. (*Id.* ¶ 3.) Moreover, RTC does not own real or personal property in Nevada, does not own bank accounts in Nevada and does not have employees in Nevada. (*Id.* ¶ 4.)

ARGUMENT

I. THE COMPLAINT SHOULD BE DISMISSED BECAUSE THIS COURT LACKS PERSONAL JURISDICTION OVER DEFENDANTS

This Court lacks personal jurisdiction over defendant RTC. In view of plaintiff's failure to plead personal jurisdiction, it is unnecessary for defendant to do more because "[h]e must allege in his pleading the facts essential to show jurisdiction. If he fails to make the necessary allegations he has no standing." *McNutt v. General Motors Acceptance Corporation*, 298 U.S. 178, 189, 56 S.Ct. 780, 785 (1936). See also *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir 1992) (quoting and relying on *McNutt*); *Industrial Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990) ("[t]he party asserting

jurisdiction has the burden of proving all jurisdictional facts [citing *McNutt*]”). Plaintiff’s utter failure to allege any facts to show personal jurisdiction compels dismissal of the complaint.

Assuming *arguendo* plaintiff had made an allegation that personal jurisdiction existed, “[w]hen a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff is ‘obligated to come forward with facts, by affidavit or otherwise, supporting personal jurisdiction.’” *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). Here, as the complaint on its face and the accompanying declaration of Warren McShane demonstrate, plaintiff cannot come forward with facts supporting personal jurisdiction because there are none. Plaintiff clearly states in his complaint that defendant RTC is a citizen of California, (Compl. ¶¶ 1, 6-10), and that the act which triggered the complaint was the mailing of a letter from Texas to persons in Alabama, (Compl. ¶ 20). Plaintiff does not allege any distribution, publication, or other effect in Nevada.

The declaration of Warren McShane provides further support of plaintiff’s allegations, and lack thereof, that defendant RTC has no contacts with Nevada. RTC is a California corporation with its principal place of business in California. (McShane Decl. ¶2.) RTC has no offices or subsidiaries in Nevada. (*Id.* ¶ 3.) RTC it is not qualified to conduct business in Nevada and it does not conduct business in Nevada. (*Id.*) Moreover, RTC does not own real or personal property in Nevada, does not own bank accounts in Nevada, nor does it have employees in Nevada. (*Id.* ¶ 4.) There are no acts by which plaintiff could argue that RTC purposefully availed itself of the privilege of conducting business within the forum state. (*Id.* ¶¶ 23-28.) *Cf. Hirsch v. Blue Cross, Blue Shield of Kansas City*, 800 F.2d 1474, 1480 (9th Cir. 1986) (insurer which was neither authorized nor licensed to do business in California but which agreed to provide coverage to California entity and its employees purposefully availed itself of benefits and protections of the forum state). There are not even incidental or indirect contacts with Nevada by which plaintiff might attempt to fashion an argument that personal jurisdiction exists. *Cf. Scott*, 792 F.2d at 927 (plaintiff’s allegations of minimum contacts were insufficient to support personal jurisdiction where only links with forum state were boarding a flight to California and declaration that multiple record stores in Los Angeles carried records of defendants’ music).


Therefore, the complaint should be dismissed on the basis of lack of personal jurisdiction because plaintiff fails to allege – and cannot allege – any facts sufficient to constitute a showing of personal

1 jurisdiction over defendant RTC.

2 **CONCLUSION**

3 For the foregoing reasons, defendant RTC respectfully requests that the motion for dismissal
4 of this action be GRANTED.

5
6 DATED this 20th day of April , 1998

7
8 
9 N. Patrick Flanagan, Esquire
Nevada Bar No. 952
Hale, Lane, Peek, Dennison, Howard,
Anderson and Pearl
10 100 West Liberty Street, 10th Floor
11 P.O. Box 3237
12 Reno, Nevada 89505
(702) 327-3000

13 Samuel D. Rosen
14 Paul, Hastings, Janofsky & Walker, LLP
399 Park Avenue
New York, N.Y. 10022
(212) 318-6000

15 *Attorneys for Defendant Religious Technology Center*
16
17
18
19
20
21
22
23
24
25
26
27
28